

ORDINANCE NO. 90-6

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA RELATING TO THE ESTABLISHMENT OF LEVELS OF SERVICE FOR COLLECTOR AND ARTERIAL ROADS WHICH ARE NOT THE RESPONSIBILITY OF ANY MUNICIPALITY, AND THE RESTRICTION OF THE ISSUANCE OF DEVELOPMENT ORDERS WHICH WOULD ADD TRAFFIC TO SUCH ROADS WHICH HAVE TRAFFIC EXCEEDING THE ADOPTED LEVEL OF SERVICE; PROVIDING FOR TITLE, INTENT/FINDINGS, DEFINITIONS, APPLICABILITY, PROCEDURE, PREVIOUS APPROVALS, SUNSET, REPEAL OF LAWS IN CONFLICT, SEVERABILITY, INCLUSION IN THE CODE OF LAWS AND ORDINANCES, AND EFFECTIVE DATE.

WHEREAS, F.S. §163.317(2) provides:

A county shall exercise authority under this act for the total unincorporated area under its jurisdiction or in such unincorporated areas as are not included in any governmental agreement with municipalities established under the provisions of subsection (1). In the case of chartered counties, the county may exercise such authority over municipalities or districts within its boundaries as is provided for in its charter;

and

WHEREAS, F.S. §163.3174(1)(b) provides:

In the case of chartered counties, the planning responsibility between the county and the several municipalities therein shall be as stipulated in the charter.

and

WHEREAS, the Palm Beach County Charter was amended in November of 1988 pursuant to referendum; and

WHEREAS, the amendment provides:

Municipal ordinances shall prevail over county ordinances to the extent of any conflict regardless of the time of passage of the municipal ordinance, except that county ordinances shall prevail over conflicting municipal ordinances in matters relating to the establishment of levels of service for collector and arterial roads which are not the responsibility of any municipality and the restriction of the issuance of development orders which would add traffic to such roads which have traffic exceeding the adopted level of service provided that such ordinance is adopted and amended by a majority of the board of county commissioners (Section 1.3(4)).

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulation Act and Florida Administrative Code, Rule 9J-5, require that realistic and adequate, economically feasible, levels of service be set for Major Thoroughfares and that these levels of service be consistent with the land use, density, intensity, and location of development and the capital improvements element; and

1 WHEREAS, the Local Government Comprehensive Planning and Land
2 Development Regulation Act and F.A.C., Rule 9J-5, require that no
3 development order be issued which results in a reduction in the level of
4 service below the adopted level of service and that public facilities be
5 available concurrent with the impacts of the development (F.S.
6 §§163.3177(10)(h) and 163.3202(2)(g); and

7 WHEREAS, the Board of County Commissioners improves the
8 capacity of county and state roads ("Major Thoroughfares") throughout
9 Palm Beach County irrespective of geopolitical boundaries; and

10 WHEREAS, the development resulting from the comprehensive
11 planning land use decisions and development orders of municipalities add
12 traffic to the Major Thoroughfare which could preclude the state and
13 county from achieving and maintaining the financially feasible adopted
14 level of service in the adopted Comprehensive Plan of Palm Beach County;
15 and

16 WHEREAS, the County and municipalities, along with other
17 agencies, are undertaking efforts to ensure that concurrency is satisfied
18 and that the traffic- related elements in the comprehensive plans are
19 consistent; and

20 WHEREAS, the County and municipalities, along with other
21 agencies, are attempting to ensure that the Major Thoroughfares function
22 at the adopted level of service; and

23 WHEREAS, the permanent county ordinance further implementing
24 the 1988 Charter amendment is currently being prepared and is scheduled
25 to be adopted within the next six (6) months; and

26 WHEREAS, in order to ensure that the Major Thoroughfares
27 function at the adopted level of service and as an interim implementation
28 of the 1988 Charter amendment it is necessary to regulate the issuance of
29 Development Orders; and

30 WHEREAS, it is necessary to obtain information as to the
31 approved but unbuilt development within municipal boundaries, and to
32 update the County's information as to approved and unbuilt developments,
33 and to continue that update and review so as to determine the amount of
34 available capacity on the Thoroughfare System which the County improves;
35 and

1 WHEREAS, this determination of available capacity is necessary
2 to ensure roadway capacity is available when development traffic impacts
3 the Major Thoroughfare system and capacity is not "given away" twice; and

4 WHEREAS, it is in the interest of the public health, safety,
5 and general welfare to ensure that the comprehensive planning land use
6 decisions and Development Orders are consistent with the physical
7 constraints and economic constraints of building the Major Thoroughfare
8 system in Palm Beach County; and

9 WHEREAS, the continued issuance of development orders
10 irrespective of the adopted level of service on the Major Thoroughfares
11 could result in the frustration of the County's, municipalities', and
12 other agencies' measures to achieve and maintain the financially feasible
13 adopted level of service; and

14 WHEREAS, Developments of Regional Impact have applied for
15 approval and are of such magnitude that, if approved without being
16 subject to the Traffic Performance Standards Code, the adopted level of
17 service might not be achievable; and

18 WHEREAS, operationally efficient Major Thoroughfares serve
19 legitimate public purposes and are in the interest of the health, safety,
20 and general welfare.

21 NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
22 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, as follows:

23 Section I. TITLE.

24 This ordinance shall be known as, and may be cited as, the Palm
25 Beach County Traffic Performance Standards Municipal Implementation
26 Ordinance.

27 Section II. INTENT/FINDINGS.

28 (A) The recitals set forth above are hereby adopted as
29 findings, and statements of intent.

30 (B)(1) The restrictions placed by this Ordinance are necessary
31 to implement the 1988 Palm Beach County Charter amendment on an interim
32 basis pending preparation and adoption of the permanent Countywide
33 Traffic Performance Standards Code. The restrictions placed by this
34 Ordinance are necessary to ensure that the traffic-related elements of of
35 the comprehensive plans are consistent with the adopted level of service

1 set by the Board of County Commissioners, and that the future planning
2 efforts of the County, municipalities, and other agencies relating to
3 traffic circulation can result in the achievement of the adopted level of
4 service.

5 (B)(2) Allowing the issuance during the existence of this
6 Ordinance of Site Specific Development Orders which generate fewer than
7 five hundred (500) net trips will not frustrate the County's,
8 municipalities', and other agencies' efforts to ensure consistency of the
9 traffic-related elements of the plans and traffic concurrency.

10 (C) Sundry development-related actions in various
11 municipalities may result in many additional projects being vested
12 against the applicability of the traffic performance standards absent
13 this Ordinance. These vestings could frustrate the County's,
14 municipalities', and other agencies', efforts to ensure concurrency, and
15 consistency in planning elements, and achievement of the adopted level of
16 service.

17 (D) It is the intent of the Board of County Commissioners to
18 adopt a subsequent countywide Traffic Performance Code which would
19 supercede this Ordinance. Therefore, it is intended that this Ordinance
20 shall be of no further force and effect six (6) months following its
21 effective date unless readopted. It is the intent of the Board of County
22 Commissioners that the superseding ordinance would be adopted prior to
23 this Ordinance being terminated and would address the same matters
24 addressed in this Ordinance.

25 Section III. DEFINITIONS.

26 Complete Application - An application filed with the
27 municipality which satisfied any application requirements of state law;
28 and the relevant land development regulations, the general rules and
29 policies adopted, and the customary general practices of the
30 municipality.

31 Development Order - As defined in Florida Statutes, Section
32 163.3164.

33 First Development Order - A Development Order issued by a Local
34 Government which establishes the density or intensity, or maximum density
35 or intensity, and use, group of uses, or permitted uses and which

1 approved a specific plan of development on a lot or lots pursuant to an
2 application by or on behalf of an owner or contract purchaser, including
3 applications initiated by a Local Government. It includes site-specific
4 rezonings, special exceptions, conditional uses, special permits, master
5 plan approvals, site plan approvals, plat approvals, and building
6 permits. It may or may not authorize the actual commencement of
7 development.

8 Project - A land use or group of land uses on a Lot.

9 Previous Approval - A Valid First Development Order formally
10 approved by a municipality: (1) for which a complete application was made
11 to, and accepted by, a Municipality, prior to the effective date of this
12 Ordinance; or (2) in the case of a Development of Regional Impact, a
13 Development of Regional Impact which received a report and recommendation
14 by the Treasure Coast Regional Planning Council prior to the effective
15 date of this Ordinance, all pursuant to formally established procedures
16 pursuant to the Local Government's land development regulations. It does
17 not include an amendment or amendments to a Previous Approval applied for
18 after the effective date of this Ordinance which amendment generate(s)
19 more than five hundred (500) Net Trips. It does not include applications
20 for First Development Orders on a Lot subject to an Interlocal Agreement
21 entered by the municipality and the County, after the effective date of
22 Ordinance 87-18, as a result of an annexation where the agreement
23 requires compliance with traffic performance standards.

24 Adopted Level of Service - The level of service set forth in
25 the 1990 Traffic Performance Standards Code of Palm Beach County.

26 Net Trips - Total trips generated by the proposed Project;
27 minus Vested Trips, internal trips, and Pass-by Trips all measured in
28 terms of average daily traffic and all specific to the particular Lot
29 involved.

30 Vested Trips - Trips generated by a Previous Approval on the
31 particular site for which a First Development Order is sought. This does
32 not include any amendment or subsequent First Development Orders which
33 increase or redistribute trips.

34 Pass-by Trips - That portion of trips generated by a proposed
35 Project which are passing trips already on the road link on which the

1 proposed Project is located, as set forth in Ordinance No. 89-19 amending
2 the Fair Share Contribution for Road Improvements Ordinance.

3 Valid - A First Development Order which: (1) was legally issued
4 by a municipality (2) was issued in accordance with proper procedure and
5 in compliance with state law, and the land development regulations and
6 codes, administrative rules and procedures, and general policies of the
7 municipality, and the requirements of all other agencies; (3) was not
8 issued by mistake; and (4) has not expired, lapsed, or been abandoned,
9 revoked, or cancelled by operation of law, or by the municipality or
10 pursuant to the municipal land development regulations or codes, rules,
11 or policies.

12 Local Government - A municipality in, and, Palm Beach County,
13 Florida.

14 Lot - Real property legally described by instrument recorded in
15 the Clerk of the public records of the Clerk of the Circuit Court in and
16 for Palm Beach County, Florida or group of such lots which are
17 contiguous.

18 Major thoroughfares - the roads in Palm Beach County
19 functionally classified as collectors or arterials which are not the
20 responsibility of any municipality.

21 Section IV. APPLICABILITY.

22 (A) This ordinance shall not apply to Previous Approvals
23 except as to the determination of such, and the reporting requirements,
24 as set forth herein. This Ordinance shall apply to all other First
25 Development Orders which add traffic to Major Thoroughfare roads
26 exceeding the Adopted Level of Service, except as specifically provided
27 herein. A First Development Order may be issued for a lot on which a
28 presently Valid Previous Approval was issued, except where there is an
29 increase of more than five hundred (500) Net Trips, in which case the
30 increased Net Trips shall comply with the 1990 Traffic Performance
31 Standards Code of Palm Beach County

32 (B) Fewer than Five Hundred Trips. Any Project generating
33 fewer than five hundred (500) Net Trips may receive a First Development
34 Order notwithstanding the provisions of this ordinance.

1 (C) Any First Development Order on a Lot for which a Complete
2 Application was filed with and accepted by the municipality on or after
3 the effective date hereof which generates more than five hundred (500)
4 Net Trips; or, in the case of a Development of Regional Impact, any First
5 Development Order of the Development of Regional Impact which Development
6 of Regional Impact did not receive a report and recommendation from the
7 Treasure Coast Regional Planning Council prior to the effective date of
8 this Ordinance; shall not be issued unless it complies with the 1990
9 Traffic Performance Standards Code of Palm Beach County, Florida.

10 (D) Nothing herein shall preclude municipal acceptance of an
11 application for a Development Order, including a First Development Order,
12 and reviewing and considering such. Nothing herein shall preclude the
13 requirements of a Municipality which are more restrictive than the
14 requirements of this Ordinance.

15 (E) A municipality may delay action on an application for a
16 First Development Order for consideration under the standards of a future
17 traffic performance standards code.

18 Section V. PROCEDURE.

19 (A) A traffic study certified by a professional engineer
20 practicing traffic engineering shall be submitted with any Complete
21 Application for a First Development Order that is not a Previous
22 Approval; provided, however, residential Projects consisting of fifty
23 (50) or fewer units need not submit a traffic study. For applicable First
24 Development Orders, the municipality shall be responsible for reviewing
25 the traffic study to determine whether the First Development Order meets
26 the 1990 Traffic Performance Standards Code of Palm Beach County,
27 Florida. This review may be done by a municipal traffic engineer or a
28 traffic engineer retained by the municipality. The municipality may,
29 however, require that the County Engineer review the traffic study to
30 determine such and advise the municipality. The review shall be in
31 accordance with the requirements of the 1990 Traffic Performance
32 Standards Code of Palm Beach County, Florida. In the case of municipal
33 review, thirty (30) days prior to approval of the application for the
34 First Development Order, the traffic study along with the determination
35 of the reviewing traffic engineer shall be sent to the County Engineer,

1 Traffic Division, 160 Australian Avenue, West Palm Beach, Florida, 33402.
2 In the case of County review, the procedural requirements of the 1990
3 Traffic Performance Standards Code of Palm Beach County, Florida shall
4 apply. In all cases, the traffic study, along with the determination of
5 the reviewing traffic engineer shall also be sent to any municipality
6 within two (2) miles of the Lot involved thirty (30) days prior to
7 approval of the application. Any objection to the traffic study and the
8 determination of the reviewing traffic engineer shall be sent to the
9 reviewing traffic engineer within twenty (20) days of the receipt of the
10 traffic study and determination. The objection shall be in writing and
11 shall specify the matters and grounds of the objection. The County or any
12 municipality within two (2) miles may appeal the determination of the
13 municipality's or county's traffic engineer to the Traffic Performance
14 Standards Appeals Board created by the 1990 Traffic Performance Standards
15 Code of Palm Beach County provided that the appealing Local Government
16 must have first timely filed a written objection to the traffic study and
17 determination. The reviewing engineer or the municipality shall send
18 notice to the objector(s) if the First Development Order will be issued.
19 The appeal shall be in writing filed with the Traffic Performance
20 Standards Appeals Board, care of the County Engineer, Traffic Division,
21 and shall specify the grounds of objection. The appeal shall be limited
22 to the issues raised in the objection or changes to the determination of
23 the reviewing traffic engineer made after the determination to which the
24 objection applies. Notice of the Issuing of the First Development Order
25 shall be sent to the County and municipalities within two (2) weeks of
26 the Lot involved within ten (10) days of its issuance. The appeal shall
27 be filed within thirty (30) days of the issuing municipality's issuing
28 the First Development Order. The appeal shall be sent to all entities
29 making or receiving the determination. All documents under this section
30 shall be sent U.S. Certified Mail, postage prepaid, return receipt
31 requested or hand delivered.

32 Section VI. MUNICIPAL DETERMINATION OF PREVIOUS APPROVAL.

33 (A) Only Valid First Development Orders which meet the
34 definition of Previous Approvals shall be considered Valid Previous
35 Approvals.

1 (B) The municipality shall establish procedures for determining
2 those lots on which a Previous Approval has been granted. The procedures
3 shall be at the sole discretion of the municipality. The municipality
4 shall send its determination as to a Previous Approval to the County
5 within fifteen (15) days its determination.

6 The County Engineer shall have thirty (30) days from the
7 receipt of the determination of the municipality to notify the property
8 owner and municipality as to, and file, an appeal.

9 (C) The documents sent pursuant to paragraphs B and C shall be
10 sent certified mail, return receipt requested, or hand delivered.

11 (D) The appeal shall be to a Court of competent jurisdiction
12 and may be filed by any substantially affected person, including any
13 Local Government.

14 (E) Limitations On County's Review/Appeal.

15 (1) The time frames set forth in Paragraph C above as to the
16 County are jurisdictional. Any failure on the part of the County to
17 timely send the notification shall result in the municipality's
18 determination being conclusive and binding.

19 (2) The review and appeal provisions set forth in Paragraph C
20 shall be limited to projects generating more than 1,000 trips after
21 taking into account internal and passer-by trips.

22 (3) Any municipal determination that there is a Previous
23 Approval on a Lot upon which building construction or infrastructure
24 improvements has been made within the last three (3) years which is
25 consistent with the Development Order considered to be the Previous
26 Approval shall not be appealed by the County.

27 (4) Any municipal determination that a Valid First Development
28 Order issued prior to the effective date of this Ordinance and within
29 three (3) years prior to the effective date of this Ordinance is a
30 Previous Approval and shall not be appealed by the County.

31 (E) Completion Date.

32 (1) (a) The municipality shall complete its review and
33 determination of all properties in its jurisdiction as to Previous
34 Approvals within one (1) year of the effective date of this Ordinance in

1 order to update the socio-economic data-base, by TAZ, for the countywide
2 computer traffic model;

3 (b) Notwithstanding that all Previous Approvals need not
4 be finally determined for one (1) year, the municipality shall identify
5 and provide the County with preliminary but complete information as to
6 specific uses approved, their locations, the density or intensity of each
7 use, and the extent of the development already built and yet to be built.
8 This shall be sent to the County within thirty (30) days of the effective
9 date of this Ordinance.

10 (2) The municipality shall update this information periodically
11 in the manner and interval prescribed by the Palm Beach County Planning
12 Division for First Development Orders issued after the effective date of
13 this Ordinance. Updates to the socio-economic data base which are the
14 result of municipal determinations as to Previous Approvals shall be sent
15 to the County within thirty (30) days of each determination. This
16 updated information shall be used for the County's review of the
17 municipality's determination as to the Previous Approvals and for
18 informational purposes to update the socio-economic data base, by TAZ,
19 for the county-wide computer traffic model.

20 (F) Any site specific development order on a lot or parcel on
21 which a Previous Approval has not been determined to exist pursuant to
22 the procedures and requirements of this Ordinance shall be subject to the
23 restrictions of this Ordinance, unless a Court of competent jurisdiction
24 determines that vested rights prohibit such subjection.

25 Section VII. REPEALER.

26 This Ordinance shall be of no further force and effect six
27 (6) months following its effective date, unless readopted.

28 Section VIII. REPEAL OF LAWS IN CONFLICT.

29 All local laws and ordinances applying to the unincorporated
30 area of Palm Beach County in conflict with any provisions of this
31 ordinance are hereby repealed.

32 Section IX. SEVERABILITY.

33 If any section, paragraph, sentence, clause, phrase, or
34 word of this ordinance is for any reason held by the Court to be

1 unconstitutional, inoperative or void, such holding shall not affect the
2 remainder of this ordinance.

3 Section X. INCLUSION IN THE CODE OF LAWS AND ORDINANCES.

4 The provisions of this ordinance shall become and be made a
5 part of the code of laws and ordinances of Palm Beach County, Florida.
6 The Sections of the ordinance may be renumbered or relettered to
7 accomplish such, and the word "ordinance" may be changed to "section,"
8 "article," or any other appropriate word.

9 Section XI. EFFECTIVE DATE.

10 The provisions of this Ordinance shall become effective
11 upon the County's receipt of acknowledgement by the Secretary of State.

12 APPROVED AND ADOPTED by the Board of County Commissioners of
13 Palm Beach County, Florida, on the 30th day of January, 1990.

14 PALM BEACH COUNTY, FLORIDA, BY ITS
15 BOARD OF COUNTY COMMISSIONERS

16 By Carol Elmyer
17 Chair

18 APPROVED AS TO FORM AND
19 LEGAL SUFFICIENCY

20 Richard W. Carlson
21 County Attorney *special counsel*

JOHN B. DUNKLE, CLERK
Board of County Commissioners
By Drilla Oswald
DEPUTY CLERK

22 Acknowledgement by the Department of State of the State of
23 Florida, on this, the 1st day of February, 1990.

24 EFFECTIVE DATE: Acknowledgement from the Department of State
25 received on the 2nd day of February, 1990, at 10:46
26 A.M., and filed in the Office of the Clerk of the Board of County
27 Commissioners of Palm Beach County, Florida.

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, JOHN B. DUNKLE, Clerk of the
Board of County Commissioners certify this to
be a true and correct copy of the original filed in
my office on 2/30/90
DATED at West Palm Beach, FL on 4-1-90
JOHN B. DUNKLE, Clerk
By: Drilla Oswald D.C.